

1999 DRAFTING REQUEST

Bill

Received: 0812811999

Received **By: olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Mark Gundrum (608) 2674158**

By/Representing: **Himself**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

Sexual intercourse or contact by person who is HIV positive; transfer of needle or other device used by HIV positive person

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
I?	olsenje 08/28/1999	csicilia 09/07/1999		_____			
/1			martykr 09/09/1999	_____	lrb-docadmin 09/09/1999		
/2	olsenje 10/07/1999	wjackson 10/08/1999	mclark 10/08/1999	_____	lrb-docadmin 10/08/1999		
/3	olsenje 10/13/1999	jgeller 10/14/1999	jfrantze 10/14/1999	_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reaured</u>
/4	olsenje 10/14/1999	j geller 10/14/1999	jfrantze 10/14/1999	_____	lrb-docadmin 10/14/1999	lrb-docadmin 10/14/1999	

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: 08/28/1999

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Wanted: Soon

Identical to LRB:

For: Mark Gundrum (608) 267-5158

By/Representing: Himself

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Extra Copies: MGD

Pre Topic:

No specific pre topic given

Topic:

Sexual intercourse or contact by person who is HIV positive; transfer of needle or other device used by HIV positive person

Instructions:

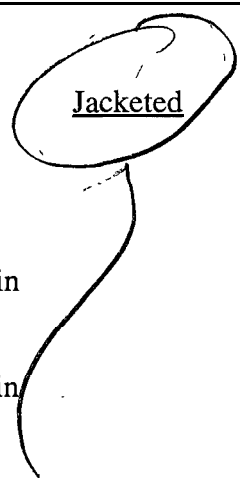
See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>T y p e</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			martykr	_____	lrb_docadmin 09/09/1999		
/2	olsenje 10/07/1999	wjackson 10/08/1999	mclark	_____	lrb_docadmin 10/08/1999		

FE Sent For:

1/3 10/14 jlg
 1/4 10/14 jlg
 To 10/14
 To 10/14



Jacket "1/4"
 for Assembly
 JEO

1999 DRAFTING REQUEST

Bill

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May Contact:

Alt. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

Sexual intercourse or contact by person who is HIV positive; transfer of needle or other device used by HIV positive person

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1		12 wLj 10/8	martykr 09/09/1999	_____	lrb_docadmin 09/09/1999		

FE Sent For:

MRC 10/8

MRC/cjs 10/8

<END>

1999 DRAFTING REQUEST

Bill

Received: **08/28/1999**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Matt Sande**

This file may be shown to any legislator: NO

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Sexual intercourse or contact by person who is HIV positive

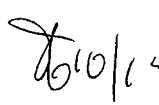
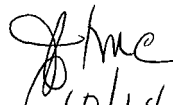
Instructions:

See Attached

Drafting History:

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/1			martykr 09/09/1999	_____	lrb_docadmin 09/09/1999		

FE Sent For:



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Subject: **Criminal Law - miscellaneous**

Extra Copies:

Pre Topic:

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Topic:

Sexual intercourse or contact by person who is HIV positive

Instructions:

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I?	olsenje	11/9/7 JG 11/9/7 WJS	11/9/8 JMS	11/9/8 JMS			

FE Sent For:

<END>

9

1997 BILL

Regen

1 AN ACT to create 941.40 of the statutes; relating to: persons with acquired
2 immunodeficiency syndrome or the human immunodeficiency virus having
3 sexual contact or sexual intercourse and providing a penalty.

Analysis by the Legislative Reference Bureau

ANALYSIS INSERT A

ANALYSIS INSERT B

INS 1-4

Current law prohibits various acts against public health and safety. Under this bill, if a person knows that he or she has had a positive test for the presence of the human immunodeficiency virus (HIV) or that he or she has been diagnosed with acquired immunodeficiency syndrome (AIDS), the person may not have sexual contact which carries a potential for transmission of HIV to another or sexual intercourse with another unless the person discloses to the other person that he or she has had a positive HIV test or that he or she has been diagnosed with AIDS. A person who violates the prohibition created by this bill must be sentenced to life imprisonment.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4

SECTION 1. 941.40 of the statutes is created to read:

BILL

941.40 Persons with acquired immunodeficiency syndrome or the human immunodeficiency virus; disclosure of status to sexual partners. (1)

In this section:

(a) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(b) "Sexual intercourse" includes the meaning given under s. [✓]939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body into the genital or anal opening of another. The emission of semen is not required.

(2) No person who knows that he or she has had a positive test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or who knows that he or she has been diagnosed with acquired immunodeficiency syndrome may have sexual contact which carries a potential for transmission of HIV to another or sexual intercourse with another unless the person discloses to the other person that he or she has had a positive test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or that he or she has been diagnosed with acquired immunodeficiency syndrome.

18

(3) A person who violates sub. [✓](2) is guilty of a Class ⁴ felony.



SECTION 2. Initial applicability.

(1) This act first applies to sexual contact or sexual intercourse occurring on the effective date of this subsection.

(END)

1 **ANALYSIS INSERT A:**

Current law also provides a penalty enhancer that may be applied to a person who is convicted of committing a sexual assault if, at the time of the assault, the person knew that he or she was infected with the human immunodeficiency virus (HIV)“& certain sexually transmitted diseases and if, as a result of the assault, the victim was significantly exposed to HIV or the sexually transmitted disease. This penalty enhancer adds five[✓] years to the maximum sentence prescribed by law for the sexual assault.

2 **ANALYSIS INSERT B:**

~~20~~ may be imprisoned for not more than 40[✓] years, if the offense occurs before December 31, 1999, or for not more than 60 years, if the offense occurs on or after December 31, 1999^{NO}

3 **INSERT 1-4:**

4 **SECTION 1. 939.622** (2m)^X of the statutes is created to read:

5 939.622 **(2m)** A person who is subject to increased penalties under this[✓] section
6 may also be charged with, convicted of and sentenced for a violation of s.[✓] 941.40 based
7 on the same unlawful acts.

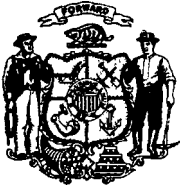
Per Rep. Gundrum 3519

- 1) Include time element for clarity
- 2) 40 yr penalty - No domestication
- 3) Cover I.V. drug use - i.e.,
giving a needle to
another knowing it has
been used by HIV + person
etc.

SEND TO: OLSEN, JEFFREY
MI LEGISLATIVE REFERENCE BUREAU
PO BOX 2037
MADISON, WISCONSIN 53701-2037

* aaaa N N 33333 *
* a a N N E *
* a a NN N E *
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* 08/18/99 2:45 P.M. ENDED 2:44 P-M, STARTED *



State of Wisconsin
1999-2000 LEGISLATURE

LRB-3519/4
JEO:cjs&jlg:km
EWLj

By Friday
10/8
D-Note

2
P.M.F.

1999 BILL

INS
1-1 ✓

regenerate
act

- ① AN ACT to create 939.622 (2m) and 941.40 of the statutes; relating to: persons
- 2 with acquired immunodeficiency syndrome or the human immunodeficiency
- ③ virus having sexual contact or sexual intercourse and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits various acts against public health and safety. Current law also provides a penalty enhancer that may be applied to a person who is convicted of committing a sexual assault if, at the time of the assault, the person knew that he or she was infected with the human immunodeficiency virus (HIV) or certain sexually transmitted diseases and if, as a result of the assault, the victim was significantly exposed to HIV or the sexually transmitted disease. This penalty enhancer adds five years to the maximum sentence prescribed by law for the sexual assault.

Under this bill, if a person knows that he or she has had a positive test for the presence of HIV or that he or she has been diagnosed with acquired immunodeficiency syndrome (AIDS), the person may not have sexual contact which carries a potential for transmission of HIV to another or sexual intercourse with another unless the person discloses to the other person that he or she has had a positive HIV test or that he or she has been diagnosed with AIDS. A person who violates the prohibition created by this bill may be imprisoned for not more than 40

first



this

BILL

~~years, if the offense occurs before December 31, 1999, or for not more than 60 years, if the offense occurs on or after December 31, 1999.~~ ← period stays

ANALYSIS INSERT

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INS
2-1

1 **SECTION 1.** 939.622 (2m) of the statutes is created to read:

2 939.622 **(2m)** A person who is subject to increased penalties under this section
3 may also be charged with, convicted of and sentenced for aviolation of s. 941.40 based
4 on the same unlawful acts.

INS
2-4

5 **SECTION 2.** 941.40 of the statutes is created to read:

6 **941.40 Persons with acquired immunodeficiency syndrome or the**
7 **human immunodeficiency virus; disclosure of status to sexual partners. (1)**

8 In this section:

9 (a) "HIV" means any strain of human immunodeficiency virus, which causes
10 acquired immunodefkiency syndrome.

11 (b) "Sexual intercourse" includes the meaning given under s. 939.22 (36) as well
12 as cunnilingus, fellatio or anal intercourse between persons or any other intrusion,
13 however slight, of any part of a person's body into the genital or anal opening of
14 another. The emission of semen is not required.

15 (2) No person who knows that he or she has had a positive test for the presence
16 of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or who knows
17 that he or she has been diagnosed with acquired immunodeficiency syndrome may
18 have sexual contact which carries a potential for transmission of HIV to another or
19 sexual intercourse with another unless the person discloses to the other person that

20 he or she has had a positive test for the presence of HIV, antigen or nonantigenic

before the sexual contact
or sexual intercourse occurs,

BILL

1 products of HIV or an antibody to HIV or that he or she has been diagnosed with
2 acquired immunodeficiency syndrome.

3 (3) A person who violates sub. (2) is guilty of a Class B felony.

may be im-
prisoned for
not more than
40 years

4 **SECTION 3. Initial applicability.**

5 (1) This act first applies to sexual contact or sexual intercourse occurring on the
6 effective date of this subsection.

7 (END)

INS
3-5
↓

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-35 19/2ins
JEO:.....

1 **INSERT 1-1:**

2 **28** transfer or use of a syringe, needle or similar object used by a person with acquired
3 immunodeficiency syndrome or the human immunodeficiency virus, **(NO AP)**

4 **ANALYSIS INSERT:**

5 **4** The bill also prohibits a person from transferring to or using on another person
a hypodermic syringe, needle or other object used or intended for use in injecting
substances into the human body if the person knows or has reason to know that the
syringe, needle or other object has been used by a person who has had a positive HIV
test or who has been diagnosed with AIDS and if the person knows or has reason to
know that the syringe, needle or other object has not been sterilized since it was used
by the person with the positive HIV test or the AIDS diagnosis. A person who violates
this prohibition may be imprisoned for not more than 40 years. The prohibition does
not apply to the transfer of a syringe, needle or other object that is not going to be used
by another person to inject a substance into his or her body. Thus, a person would
not violate the prohibition by giving a used syringe or needle to a program that
collects used syringes or needles for the purpose of properly disposing of them.

5 **INSERT 2-1:**

6 **SECTION 4** 939.50 (1) (intro.) of the statutes is amended to read:

7 939.50 **(1)** (intro.) Except as provided in ss. 941.39, 941.40, 946.83 and 946.85,
8 felonies in chs. 939 to 951 are classified as follows:

9 History: 1977 c. 173; 1981 c. 280; 1987 a. 552 s. 64; 1993 a. 194; 1995 a. 69; 1997 a. 283.

9 **INSERT 2-4:**

10 **SECTION 4** 941.39 of the statutes is created to read:

11 **941.39 Transfer or use of syringe, needle or similar object used by**
12 **person with acquired immunodeficiency syndrome or the human**
13 **immunodeficiency virus. (1)** In this section:

14 (a) "Drug injection device" means a hypodermic syringe, needle or other object
15 used or intended for use in parenterally injecting substances into the human body.

1 (b) "HIV" means any strain of human immunodeficiency virus, which causes
2 acquired immunodeficiency syndrome.

3 (2) (a) No person may transfer a drug injection device to another person if the
4 person knows or has reason to know all of the following:

5 1. That the drug injection device has been used by a person who has had a
6 positive test for the presence of HIV, antigen or ~~nonantigen~~ ^{nonantigenic} products of HIV or an
7 antibody to HIV or by a person who has been diagnosed with acquired
8 immunodeficiency syndrome.

9 2. That the drug injection device has not been sterilized since it was used by
10 the person specified in ~~part (a)~~ ^{Subd. 1}.

11 3. That the drug injection device will be used by another person to parenterally
12 inject a substance into his or her body or will be possessed by another person with
13 the intent to use it to parenterally inject a substance into his or her body.

14 (b) No person may use a drug injection device to parenterally inject a substance
15 into the body of another person if the person knows or has reason to know all of the
16 following:

17 1. That the drug injection device has been used by a person who has had a
18 positive test for the presence of HIV, antigen or ~~nonantigen~~ ^{nonantigenic} products of HIV or an
19 antibody to HIV or by a person who has been diagnosed with acquired
20 immunodeficiency syndrome.

21 2. That the drug injection device has not been sterilized since it was used by
22 the person specified in ~~part (a)~~ ^{Subd. 1}.

23 (3) A person who violates sub. (2) may be imprisoned for not more than 40
24 years.

25 **INSERT 3-5:**

1 ~~(D)~~[#] TRANSFER OR USE OF SYRINGE, NEEDLE OR OTHER DEVICE. The treatment of
2 section 941.39[✓] of the statutes first applies to the transfer or use of a hypodermic
3 syringe, needle or other object occurring on the effective date of this subsection. ✓

4 ~~(H)~~[#] SEXUAL CONTACT OR SEXUAL INTERCOURSE. The treatment of section 941.40[✓] of
5 the statutes first applies to sexual contact or sexual intercourse occurring on the
6 effective date of this subsection. ✓

LR3-3519/2dn

JED: :

D Note

¶ Proposed s. 941.39 covers both transfer and use of a needle or

similar device. Okay? Also, note

that the definition of "drug injection

device" is based on s. 961.571 (1)

(b) 1. stats. Does that cover all of the devices that you ~~want~~ intend to

cover?

JED

DRAFTERS NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3519/2dn
JEO:cjs/jlg/wlj:mrc

October 8, 1999

Proposed s. 941.39 covers both transfer and use of a needle or similar device. Okay? Also, note that the definition of "drug injection device" is based on s. 961.571 (1) (b) 1., stats. Does that cover all of the devices that you intend to cover?

Jefren E. Olsen
Senior Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3519/Z
JEO:cjs/jlg/wlj:mrc

Wanted Thurs. 10/14

1999 BILL

3
r.m.r.

regenerate

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AN ACT to amend 939.50 (1) (intro.); and to **create** 939.622 (2m), 941.39 and 941.40 of the statutes; **relating to:** ~~transfer or use of a syringe, needle or similar object used by a person with acquired immunodeficiency syndrome or the human immunodeficiency virus,~~ persons with acquired immunodeficiency syndrome or the human immunodeficiency virus having sexual contact or sexual intercourse and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits various acts against public health and safety. Current law also provides a penalty enhancer that may be applied to a person who is convicted of committing a sexual assault if, at the time of the assault, the person knew that he or she was infected with the human immunodeficiency virus (HIV) or certain sexually transmitted diseases and if, as a result of the assault, the victim was significantly exposed to HIV or the sexually transmitted disease. This penalty enhancer adds five years to the maximum sentence prescribed by law for the sexual assault.

Under this bill, if a person knows that he or she has had a positive test for the presence of HIV or that he or she has been diagnosed with acquired immunodeficiency syndrome (AIDS), the person may not have sexual contact which carries a potential for transmission of HIV to another or sexual intercourse with another unless the person first discloses to the other person that he or she has had

BILL

a positive HIV test or that he or she has been diagnosed with AIDS. A person who violates this prohibition may be imprisoned for not more than 40 years.

~~The bill also prohibits a person from transferring to or using on another person a hypodermic syringe, needle or other object used or intended for use in injecting substances into the human body if the person knows or has reason to know that the syringe, needle or other object has been used by a person who has had a positive HIV test or who has been diagnosed with AIDS and if the person knows or has reason to know that the syringe, needle or other object has not been sterilized since it was used by the person with the positive HIV test or the AIDS diagnosis. A person who violates this prohibition may be imprisoned for not more than 40 years. The prohibition does not apply to the transfer of a syringe, needle or other object that is not going to be used by another person to inject a substance into his or her body. Thus, a person would not violate the prohibition by giving a used syringe or needle to a program that collects used syringes or needles for the purpose of properly disposing of them.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 939.50 (1) (intro.) of the statutes is amended to read:

939.50 (1) (intro.) Except as provided in ss. ~~941.39~~ 941.40, 946.✓ and 946.85, felonies in chs. 939 to 951 are classified as follows:

SECTION 2. 939.622 (2m) of the statutes is created to read:

939.622 (2m) A person who is subject to increased penalties under this section may also be charged with, convicted of and sentenced for a violation of s. 941.40 based on the same unlawful acts.

~~**SECTION 3.** 941.39 of the statutes is created to read:~~

~~941.39 **Transfer or use of syringe, needle or similar object used by person with acquired immunodeficiency syndrome or the human immunodeficiency virus.** (1) In this section:~~

~~(a) "Drug injection device" means a hypodermic syringe, needle or other object used or intended for use in parenterally injecting substances into the human body.~~

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(b) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(2) (a) No person may transfer a drug injection device to another person if the person knows or has reason to know all of the following:

1. That the drug injection device has been used by a person who has had a positive test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or by a person who has been diagnosed with acquired immunodeficiency syndrome.

2. That the drug injection device has not been sterilized since it was used by a person specified in subd. 1.

3. That the drug injection device will be used by another person to parenterally inject a substance into his or her body or will be possessed by another person with the intent to use it to parenterally inject a substance into his or her body.

(b) No person may use a drug injection device to parenterally inject a substance into the body of another person if the person knows or has reason to know all of the following:

1. That the drug injection device has been used by a person who has had a positive test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or by a person who has been diagnosed with acquired immunodeficiency syndrome.

2. That the drug injection device has not been sterilized since it was used by a person specified in subd. 1.

(3) A person who violates sub. (2) may be imprisoned for not more than 40 years

SECTION 4. 941.40 of the statutes is created to read:

BILL

941.40 Persons with acquired immunodeficiency syndrome or the human immunodeficiency virus; disclosure of status to sexual partners. (1)

In this section:

(a) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(b) "Sexual intercourse" includes the meaning given under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body into the genital or anal opening of another. The emission of semen is not required.

(2) No person who knows that he or she has had a positive test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or who knows that he or she has been diagnosed with acquired immunodeficiency syndrome may have sexual contact which carries a potential for transmission of HIV to another or sexual intercourse with another unless, before the sexual contact or sexual intercourse occurs, the person discloses to the other person that he or she has had a positive test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or that he or she has been diagnosed with acquired immunodeficiency syndrome.

(3) A person who violates sub. (2) may be imprisoned for not more than 40 years.

SECTION 5. Initial applicability.

(1) ~~TRANSFER OR USE OF SYRINGE, NEEDLE OR OTHER DEVICE. The treatment of section 941.39 of the statutes first applies to the transfer or use of a hypodermic syringe, needle or other object occurring on the effective date of this subsection.~~

BILL

1

(2) ~~SEXUAL CONTACT OR SEXUAL INTERCOURSE. The treatment of section 941.40 of~~

2

This act ✓
the statute first applies to sexual contact or sexual intercourse occurring on the

3

effective date of this subsection.

4

(END) ✓



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3519/3
JEO:cjs/jlg/wlj:jf

Today

1999 BILL

9
4
r.m.f.

INS
1-2
1
2
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4

regenerate

AN ACT to amend 939.50 (1) (intro.); and to create 939.622 (2m) and 941.40 of the statutes; relating to: persons with acquired immunodeficiency syndrome or the human immunodeficiency virus having sexual contact or sexual intercourse and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits various acts against public health and safety. Current law also provides a penalty enhancer that may be applied to a person who is convicted of committing a sexual assault if, at the time of the assault, the person knew that he or she was infected with the human immunodeficiency virus (HIV) or certain sexually transmitted diseases and if, as a result of the assault, the victim was significantly exposed to HIV or the sexually transmitted disease. This penalty enhancer adds five years to the maximum sentence prescribed by law for the sexual assault.

Under this bill, if a person knows that he or she has had a positive test for the presence of HIV or that he or she has been diagnosed with acquired immunodeficiency syndrome (AIDS), the person may not have sexual contact which carries a potential for transmission of HIV to another or sexual intercourse with another unless the person first discloses to the other person that he or she has had

BILL

a positive HIV test or that he or she has been diagnosed with AIDS. A person who violates this prohibition may be imprisoned for not more than 40 years.

ANALYSIS
(INSERT)

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 939.50 (1) (intro.) of the statutes is amended to read:

02 939.50 (1) (intro.) Except as provided in ss. ^{941.39 ✓} ~~941.40~~, 946.83 and 946.85, felonies
3 in chs. 939 to 951 are classified as follows:

4 SECTION 2. 939.622 (2m) of the statutes is created to read:

5 939.622 (2m) A person who is subject to increased penalties under this section
6 may also be charged with, convicted of and sentenced for a violation of s. 941.40 based
7 on the same unlawful acts.

INS
2-7

8 SECTION 3. 941.40 of the statutes is created to read:

9 **941.40 Persons with acquired immunodeficiency syndrome or the**
10 **human immunodeficiency virus; disclosure of status to sexual partners. (1)**

11 In this section:

12 (a) "HIV" means any strain of human immunodeficiency virus, which causes
13 acquired immunodeficiency syndrome.

14 (b) "Sexual intercourse" includes the meaning given under s. 939.22 (36) as well
15 as cunnilingus, fellatio or anal intercourse between persons or any other intrusion,
16 however slight, of any part of a person's body into the genital or anal opening of
17 another. The emission of semen is not required.

16 (2) No person who knows that he or she has had a positive test for the presence
19 of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or who knows
20 that he or she has been diagnosed with acquired immunodeficiency syndrome may
21 have sexual contact which carries a potential for transmission of HIV to another or

BILL

1 sexual intercourse with another unless, before the sexual contact or sexual
2 intercourse occurs, the person discloses to the other person that he or she has had
3 a positive test for the presence of HIV, antigen or nonantigenic products of HIV or
4 an antibody to HIV or that he or she has been diagnosed with acquired
5 immunodeficiency syndrome.

6 (3) A person who violates sub. (2) may be imprisoned for not more than 40
7 years.

8 **SECTION 4. Initial applicability.**

9 (1) ~~This section~~ first applies to sexual contact or sexual intercourse occurring on the
10 effective date of this subsection.

11 (END)

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3-8

(CS)
SEXUAL INTERCOURSE OR SEXUAL CONTACT. The
treatment of section 941.40^v of the statutes

1999 BILL

1 ~~(AN ACT to repeal 961.571 (1) (b); to renumber 961.571 (1) (a); to amend 939.30~~
 2 ~~(1) (intro.); and to create 20.9278 and 941.39 of the statutes, relating to: drug~~
 3 ~~paraphernalia, prohibiting~~ transfer or use of a syringe, needle or similar object
 4 used by a person with acquired immunodeficiency syndrome or the human
 5 immunodeficiency virus, ~~prohibiting public funding for the distribution of~~
 6 sterile needles for the illegal injection of controlled substances or controlled
 7 substance analogs, and providing a penalty.

INS
1-2

Analysis by the Legislative Reference Bureau

Current law prohibits the possession, use, manufacture and delivery of drug paraphernalia and provides various penalties for violations of this prohibition. Drug paraphernalia includes any object or item that is used, designed for use or primarily intended for use in unlawfully injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance (dangerous drug). However, current law excludes all of the following from the definition of drug paraphernalia: 1) hypodermic syringes, needles or other objects used or intended for use in parenterally injecting substances into the human body; and 2) any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products. This bill eliminates the exclusion of these objects and items from the definition of drug paraphernalia. Thus, under the bill, these objects and

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~~items will be drug paraphernalia and will be subject to the current prohibitions and penalties relating to drug paraphernalia if they are used, or are possessed, manufactured or delivered with intent to be used, to inject, ingest, inhale or otherwise introduce a controlled substance into the human body unlawfully.~~

ANALYSIS
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In addition, this bill prohibits a person from transferring to or using on another person a hypodermic syringe, needle or other object used or intended for use in injecting substances into the human body if the person knows or has reason to know that the syringe, needle or other object has been used by a person who has had a positive HIV test or who has been diagnosed with AIDS and if the person knows or has reason to know that the syringe, needle or other object has not been sterilized since it was used by the person with the positive HIV test or the AIDS diagnosis. A person who violates this prohibition may be imprisoned for not more than 40 years. The prohibition does not apply to the transfer of a syringe, needle or other object that is not going to be used by another person to inject a substance into his or her body. Thus, a person would not violate the prohibition by giving a used syringe or needle to a program that collects used syringes or needles for the purpose of properly disposing of them.

Finally, this bill prohibits a state agency, a local governmental unit (as defined in the bill) and an authority from authorizing state or local funds or federal funds passing through the state treasury to distribute sterile needles for the illegal injection of controlled substances or controlled substance analogs into the body. The bill provides an exception to this restriction if applying the restriction would result in the loss of federal funds.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.9278 of the statutes is created to read:

2 **20.9278 Prohibitions on funding for sterile needle distribution.** (1) In
3 this section:

4 (a) "Controlled substance" has the meaning given in s. 961.01 (4).

5 (b) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

6 (c) "Local governmental unit" means a city, village, town or county or an agency
7 or subdivision of a city, village, town or county.

8 (d) "State agency" has the meaning given in s. 16.004 (12) (a)

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1 (2) No state agency, local governmental unit or authority may authorize
 2 payment of funds of this state, of any local governmental unit or, subject to sub. (3),
 3 of federal funds passing through the state treasury for the distribution of sterile
 4 needles for the injection of a controlled substance or controlled substance analog into
 5 the human body in violation of ch. 961.

6 (3) The restriction under sub. (2) applies only to the extent that the application
 7 of the restriction does not result in the loss of any federal funds.

SECTION 2. 939.50 (1) (intro.) of the statutes is amended to read:

8 939.50 (1) (intro.) Except as provided in ss. 941.39, 946.83 and 946.85, felonies
 9 in chs. 939 to 951 are classified as follows:
 10

SECTION 3. 941.39 of the statutes is created to read:

11 **941.39 Transfer or use of syringe, needle or similar object used by**
 12 **person with acquired immunodeficiency syndrome or the human**
 13 **immunodeficiency virus. (1) In this section:**
 14

15 (a) "Drug injection device" means a hypodermic syringe, needle or other object
 16 used or intended for use in parenterally injecting substances into the human body.

17 (b) "HIV" means any strain of human immunodeficiency virus, which causes
 18 acquired immunodeficiency syndrome.

19 (2) (a) No person may transfer a drug injection device to another person if the
 20 person knows or has reason to know all of the following:

- 21 1. That the drug injection device has been used by a person who has had a
- 22 positive test for the presence of HIV, antigen or nonantigenic products of HIV or an
- 23 antibody to HIV or by a person who has been diagnosed with acquired
- 24 immunodeficiency syndrome.

INS
2-7

